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FIRST GENERAL COUNSEL'S REPORT

CELA
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MUR: 6619

DATE COMPLAINT FILED: 08/01/12

DATE OF NOTIFICATION: 08/08/12

DATE ACTIVATED: 09/18/12

EXPIRATION OF SOL: 02/02/17-07/24/17

COMPLAINANT:

Upton for All of Us

RESPONDENTS:

Hoogendyk for Congress and Jack W.

Hoogendyk in his official capacity as treasurer

Jack W. Hoogendyk

Minde S. Artman

RELEVANT STATUTES:

2 U.S.C. § 432(e)(1)

2 U.S.C. § 441a(a)

2 U.S.C. § 441a(f)

2 U.S.C. § 441f

INTERNAL REPORTS CHECKED:

FEC Disclosure Reports

FEDERAL AGENCIES CHECKED:

None

I. INTRODUCTION

The Complaint alleges that Jack W. Hoogendyk knowingly and willfully violated

2 U.S.C. § 432(e)(1) by filing a late and fraudulently backdated Statement of Candidacy.

It further alleges that Hoogendyk and his campaign committee, Hoogendyk for Congress and

Jack W. Hoogendyk in his official capacity as treasurer (the "Committee"), knowingly and

willfully violated 2 U.S.C. §§ 441a(f) and 441f by facilitating the making of excessive

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1 contributions and contributions in the name of another in connection with a fundraising event
2 held by Minde S. Artman.¹

3 As set forth in detail below, we recommend that the Commission exercise its
4 prosecutorial discretion and dismiss the allegation that Hoogendyk violated 2 U.S.C.
5 § 432(e)(1) and find no reason to believe that Hoogendyk or the Committee violated 2 U.S.C.
6 §§ 441a(f) or 441f, or that Artman violated 2 U.S.C. §§ 441a(a) or 441f. We also recommend
7 that the Commission close the file in this matter.

8 II. FACTUAL AND LEGAL ANALYSIS

9 A. Hoogendyk's Failure to Timely File a Statement of Candidacy Does Not 10 Warrant Further Use of Commission Resources.

11
12 An individual becomes a "candidate" under the Federal Election Campaign Act of
13 1971, as amended, (the "Act") when he or she has received in excess of \$5,000 in
14 contributions or made more than \$5,000 in expenditures. 2 U.S.C. § 431(2). Once an
15 individual meets the \$5,000 threshold, he or she has 15 days to designate a principal campaign
16 committee by filing a Statement of Candidacy with the Commission. 2 U.S.C. § 432(e)(1);
17 11 C.F.R. § 101.1(a). The principal campaign committee must file a Statement of
18 Organization within ten days of its designation as principal campaign committee.² 2 U.S.C.
19 § 433(a).

¹ The Complaint also alleges that the Committee violated the Act by distributing contribution solicitations without a disclaimer required by the Internal Revenue Service. The Commission need not address this allegation because it is outside of its jurisdiction.

² The Act addresses violations of law that are knowing and willful. See 2 U.S.C. § 437g(a)(5)(B). The phrase "knowing and willful" indicates that "actions [were] taken with full knowledge of all of the facts and a recognition that the action is prohibited by law." 122 Cong. Rec. H3778 (daily ed. May 3, 1976). See also *Federal Election Commission v. John A. Dramei for Congress Committee*, 640 F. Supp. 985, 987 (D.N.J. 1986).

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1 Hoogendyk became a candidate on January 12, 2012, because he received in excess of
2 \$5,000 in contributions on that date; he was therefore required to file a Statement of
3 Candidacy by January 27, 2012. The Complaint alleges Hoogendyk failed to do so.³

4 Hoogendyk filed two Statements of Candidacy. He filed the first Statement on March
5 7, 2012, dated the same day, and a second on March 12, 2012, dated January 17, 2012.
6 Compl., Exs. C, D. In cover letters that accompanied both filings, Hoogendyk maintained that
7 he had previously filed a Statement of Candidacy in January 2012, when he became a
8 candidate, but was resubmitting the form because that earlier filing did not appear on the
9 Commission's website. *Id.*

10 Based on these facts, the Complaint alleges that Hoogendyk filed a late and
11 fraudulently backdated Statement of Candidacy. Compl. at 1-3. Noting that the Committee
12 was required to maintain copies of all records and statements pursuant to 11 C.F.R.
13 § 104.14(b)(2), the Complaint questions why Hoogendyk did not simply provide the
14 Commission with a photocopy of his alleged initial filing instead of filing two Statements of
15 Candidacy with different dates.⁴ Compl. at 7.

16 In response, Hoogendyk maintains that, on January 17, 2012, five days after he
17 became a candidate, he prepared a Statement of Candidacy and mailed it to the Commission.
18 Hoogendyk Resp. at 1. According to Hoogendyk, around March 6, 2012, he learned that the

³ The Complaint acknowledges that Hoogendyk did, however, file a Statement of Organization on January 25, 2012, identifying himself as a candidate and designating Hoogendyk for Congress as his principal campaign committee. Compl. at 2.

⁴ The Complaint does not allege that the respondents violated 11 C.F.R. § 104.14(b)(2). Instead it appears to cite the provision only to buttress its allegation that Hoogendyk fraudulently backdated his Statement of Candidacy. Therefore we make no recommendation with respect to this provision. In any event, the requirement to maintain copies at Section 104.14(b)(2) does not apply to Statements of Candidacy. See 11 C.F.R. § 104.14(b)(2) (requires preservation of a copy of each report or statement required to be filed under 11 C.F.R. Part 102 and 104; Statements of Candidacy are required under Part 101).

1 Commission's website did not reflect this Statement of Candidacy and immediately phoned
2 the Commission seeking advice. *Id.* Hoogendyk states that a Commission analyst suggested
3 that he file a new Statement of Candidacy, which he faxed on March 7, 2012. *Id.* He
4 explains that later that day, upon searching for his original Statement of Candidacy dated
5 January 17, 2012, "it was found" and he mailed the Commission a copy. *Id.* This, he
6 explains, is how he ended up filing two copies of the Statement of Candidacy. *Id.* He asserts
7 that the allegation that he fraudulently backdated his Statement of Candidacy is simply untrue.
8 *Id.*

9 Although Hoogendyk asserts that he mailed a Statement of Candidacy on January 17,
10 2012, the Commission did not receive it on or before the January 27, 2012, due date.⁶ But
11 because Hoogendyk filed a Statement of Organization identifying himself as a candidate on
12 January 25, 2012, the public was aware that he was a candidate. Thus, as a practical matter,
13 Hoogendyk timely disclosed his candidacy, albeit in the Committee's Statement of
14 Organization and not by also filing a timely Statement of Candidacy.

15 In light of these circumstances, where the public was timely informed of Hoogendyk's
16 candidacy, the use of further Commission resources is not warranted. Therefore, we

⁶ The Reports Analysis Division located Hoogendyk's original mailing, which contained his Statement of Organization and was received on January 25, 2012, and verified that a Statement of Candidacy was not included.

1 recommend that the Commission exercise its prosecutorial discretion and dismiss the
2 allegation that Hoogendyk violated section 432(e)(1) by failing to timely file a Statement of
3 Candidacy. *See Heckler v. Chaney*, 470 U.S. 821, 831 (1985).⁷

4 **B. The Allegation that Respondents Facilitated the Making of Excessive**
5 **Contributions and Contributions in the Name of Another is Baseless.**
6

7 The Act prohibits any person from making contributions "to any candidate and his
8 authorized political committee with respect to any election for federal office which, in the
9 aggregate, exceed \$2,000." 2 U.S.C. § 441a(a)(1)(A). Indexed for inflation, this contribution
10 limit was \$2,500 in the 2012 election cycle. The Act also prohibits any candidate or political
11 committee from knowingly accepting any excessive contribution. 2 U.S.C. § 441a(f). The
12 Act further prohibits a person from making a contribution in the name of another person,
13 knowingly permitting his name to be used to effect such a contribution, or knowingly
14 accepting a contribution made by one person in the name of another. 2 U.S.C. § 441f.

15 The Complaint alleges that the Respondents facilitated the making of excessive
16 contributions and contributions in the name of another. Compl. at 3-4, 8. Specifically, the
17 Complaint alleges that on July 24, 2012, the Committee sent an e-mail solicitation to
18 supporters that contained a contribution arrangement that "readily enables potentially
19 excessive and impermissible contributions." Compl. at 4. The e-mail stated:

20 Stock your kitchen and raise funds for Jack Hoogendyk. Minde
21 Artman, Independent Pampered Chef Consultant, has an Online
22 Pampered Chef Show open. Minde will donate a portion of her
23 commission equal to 15% of the pre tax and shipping sales to
24 Jack's campaign.*

⁷ The Complaint also alleges that Hoogendyk committed a knowing and willful violation by fraudulently backdating his Statement of Candidacy, and requests that the Commission refer such violation to the Department of Justice if it finds that there is probable cause to believe this violation occurred. Because we do not recommend that the Commission pursue this matter, the question of whether to refer this alleged violation is moot.

1
2 *Id.* The asterisk points to a statement at the bottom of the e-mail, which explains that “this is
3 not an endorsement from or partnership with The Pampered Chef Company. Minde Artman,
4 Independent Pampered Chef Consultant, is donating from her own personal income.” *Id.*

5 The Complaint explains that this fundraising arrangement facilitates the making of
6 excessive contributions because, for example, if Artman was particularly successful in selling
7 Pampered Chef products to Hoogendyk supporters, it is feasible that 15 percent of her
8 commission could exceed the \$2,500 contribution limit. Compl. at 8. Along the same lines,
9 the Complaint asserts that the arrangement facilitates the making of contributions in the name
10 of another because, by purchasing Artman’s products with knowledge that 15 percent of
11 Artman’s commission will go to the Hoogendyk campaign, “Hoogendyk supporters would be
12 able to make contributions to his campaign in Artman’s name while evading the contribution
13 limits and the disclosure provisions.” *Id.*

14 In response, Hoogendyk explains that Artman, a Pampered Chef consultant, was
15 making a gesture to encourage her friends to purchase products from her business, informing
16 them that a percentage of her profit would be contributed to the Hoogendyk campaign.
17 Hoogendyk Resp. at 2. Hoogendyk asserts that the solicitation explicitly states that any
18 contribution that Artman made would be from her money; that “it would have been highly
19 unlikely that she would sell enough merchandise to reach \$2,500 in contributions”; and that
20 her total contribution to the Committee was \$50. *Id.*

21 In a separate response, Artman explains that the Pampered Chef campaign fundraiser
22 could not have allowed her to donate more than the \$2,500 limit because that would have
23 required over \$16,000 in sales, an amount well in excess of revenues generated by her largest
24 show, which produced only \$1,100 in sales. Artman Resp. ¶ 3. Artman further explains that

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1 she received two orders totaling \$268.50 from the fundraiser. *Id.* Of that amount, she had
2 committed to donate \$40.38 to the Committee under the fundraising arrangement. *Id.*
3 Rounding up, Artman made a total contribution to the Committee of \$50. *Id.*

4 There is no factual basis to the Complaint's allegation that the fundraiser at issue
5 facilitated or resulted in excessive contributions or contributions in the name of another.

6 Available information reflects that Artman's contribution to the Committee was just \$50, well
7 below the \$2,500 contribution limit. In addition, the money used for the contribution was
8 made from her own earned income, not money provided to her from other individuals; the
9 solicitation clearly states that Artman was "donating from her own personal income." Thus,
10 there is no information suggesting that contributions were made in the name of another.

11 Consequently, we recommend that the Commission find no reason to believe that the
12 Committee and Hoogendyk in his personal capacity knowingly and willfully violated 2 U.S.C.
13 §§ 441a(f) or 441f, or that Artman violated 2 U.S.C. §§ 441a(f) or 441f, and close the file.

14 III. RECOMMENDATIONS

- 15 1. Dismiss the allegation that Jack W. Hoogendyk knowingly and willfully
16 violated 2 U.S.C. § 432(e)(1).
17
- 18 2. Find no reason to believe that Jack W. Hoogendyk knowingly and willfully violated
19 2 U.S.C. §§ 441a(f) or 441f.
20
- 21 3. Find no reason to believe that Hoogendyk for Congress and Jack W. Hoogendyk in
22 his official capacity as treasurer knowingly and willfully violated 2 U.S.C.
23 §§ 441a(f) or 441f.
24
- 25 4. Find no reason to believe that Minde S. Artman violated 2 U.S.C. §§ 441a(a) or
26 441f.
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1 5. Approve the attached Factual and Legal Analyses.
2

3 6. Approve the appropriate letters.
4

5 7. Close the file.
6

7 Anthony Herman
8 General Counsel

9
10 12-17-12
11 Date

By: Kathleen Guith
Kathleen Guith
Deputy Associate General Counsel
for Enforcement

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18 Tracey L. Ligert
19 Attorney
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